A SYNOPSIS ON

AN EMPIRICAL STUDY OF ISSUES AND CHALLENGES IN IMPLEMENTATION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT 1985 WITH SPECIAL REFERENCE TO NAGPUR DISTRICT

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List of Abbreviations

DMT	Dimethyltryptamine
LSD	Lysergic Acid Diethylamide
MDMA	Methylenedioxy-methylamphetamine
NCRB	National Crime Record Bureau
NDPS	Narcotic Drugs and Psychotropic Substances
SPSS	Statistical Package for the Social Sciences
UNODC	United Nations Office on Drugs and Crime
w.e.f.	With Effect From

An Empirical Study of Issues and Challenges in implementation of Narcotic Drugs and Psychotropic Substances Act 1985 with special reference to Nagpur District

I. Introduction-

Drug addiction or substance abuse is a baffling problem faced by every society of the world. Medically speaking, it is a disease that affects a person's brain and behaviour which leads to an inability to control the use of a legal or illegal drug or medication. In normal parlance, drugsare the substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, and any articles other than food, water, or oxygen that are intended to affect the mental or body function of humans or animals. But Narcotics are a kind of drugwhich dull the senses and commonly become addictive after prolonged use of it.[1]Legally speaking, a narcotic drug could be an opiate (a true narcotic), cannabis (a non-narcotic) or cocaine (the very antithesis of a narcotic, since it is a stimulant). The term ópsychotropic substanceó denotes mind-altering drugs such as Lysergic Acid Diethylamide (LSD), Phencyclidine, Amphetamines, Barbiturates, Methaqualone, anddesigner drugs (MDMA, DMT, etc.).[2]

Drugs of abuse generally categorised into natural, semi synthetic and synthetic drugs. Opium poppy, cannabis and coca leaves are natural drugs whereas Morphine, codeine, heroin, etc. produced by some chemical treatment on opium and cocaine produced from coca plant is a semi-synthetic drug.Amphetamines, ecstasy, diazepam, methaqualone are the examples of synthetic drugs. All these drugs act as stimulant, hallucinogen, sedative or tranquilisers upon body of user and when dependency upon these substances will get increased its use converts into addiction. Though for shorten time period it create relieving effects upon body and mind of user its long time effects are life threatening and therefore itsavailability and use is restricted at national and international levels by making strict legislations.

Meaning and Definition of Narcotic Drugs and Psychotropic Substances-

The term "narcotic" is believed to have been coined by the Greek physician Galen to refer to agents that numb or deaden, causing loss of feeling or paralysis. It is based on the Greek word ónarcosisôwhich was used by Hippocrates for the process of numbing or the numbed state.[3]As per the legal definition ónarcotic drugômeans coca leaf, cannabis (hemp), opium,

[1] https://legal-dictionary.thefreedictionary.com/Drugs+and+Narcotics
[2] http://rajasthanjudicialacademy.nic.in/docs/studyMaterial17122020.pdf
[3] https://en.wikipedia.org/wiki/Narcotic

poppy straw and includes all manufactured goods.[4] Whereas ôPsychotropic substancesô are any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule[5].

According to the UNODC World Drug Report 2018, it is estimated that over 31 million people who use drugs suffer from drug use disorders[6]. The situation in India is also not far better. As per recent NCRB report estimating crime record,a total of 57,867 cases which were registered for drugs seizure in which 74,620 persons (including foreigners) were arrested during 2019 in the country as compared to 49,450 cases registered during 2018, showing an increase of 17.0%.[7]

History of Enactment of Narcotic Drugs and Psychotropic Substances Act, 1985-

No doubt drugabuse is a victimless crime but when we look at the upward growth of drug dealings/trafficking in the World market, it becomes necessary to bring it under the clutches of law. The severity and effects of drugs upon physical and mental health and wealth of the society, demands for its prohibition at multidimensional levels.The framing of policies, enactment of law and its effective implementation on the part of different stakeholders are some of such dimension for control of drug abuse.

In India until 1985 Cannabis and its derivatives (bhang, charas and ganja) were legally sold and were commonly used for recreational purposes. India opposed the Single Convention on Narcotic Drugs (1961) which was proposed by United States under law against all drugs. Thus after opposition the convention came to a favourable decision whereby gave 25 years ôGrace periodô to India to make cannabis available for scientific and medical purpose and not for any other reason.[8]After completion of said grace period, ultimately in the year 1985 the Indian Parliament enacted a comprehensive legislation on narcotics drugs & psychotropic substances by name Narcotic Drugs & Psychotropic Substances Act, 1985 repealing earlier Acts i.e. the Opium Act 1857, Opium Act 1878 and Dangerous Drugs Act, 1930. The new act came into force w.e.f. 14.11.1985.[9] Since then till date, the NDPS Act, 1985 prohibits cultivation, manufacturing, possession, sale, import-export etc. of narcotic drugs and

[4]Section 2(xiv) of NDPS Act, 1985
[5] Section 2(xxiii) of NDPS Act, 1985
[6]https://www.incb.org/documents/Publications/AnnualReports/AR2019/Annual_Report_Chapters/AR2019_Chapter_I_EN.pdf
[7] https://ncrb.gov.in/sites/default/files/CII%202019%20SNAPSHOTS%20STATES.pdf
[8] https://juniperpublishers.com/jfsci/pdf/JFSCI.MS.ID.555644.pdf
[9] http://cbn.nic.in/html/opiumhistory1.htm

psychotropic substances within India. The main object behind enactment of NDPS Act was to prevent drug trafficking in India. All the provisions in the Act were framed by keeping in mind the said objective. On 17th of March, 1986, the Narcotics Control Bureau was also appointed as an apex enforcement agency under the Act, to co-ordinate activities of different stakeholders involved in its implementation.

II. Statement of Research Problem-

With the object of conducting speedy trial of the offences the provision for constitution of Special Courts was inserted in the NDPS Act.[10]The first two courts which were started functioning as Special Courts under this Act were set up at Bombay vide Government notification dated 04/01/1991.[11] Thereafter at all other district places as well the special courts were established in Maharashtra. Out of 36 districts of Maharashtra in near about 33 districts special courts were constituted for trial of NDPS cases. But still the pendency of NDPS cases is very high in Courts in India.

As per NCRB data published in Crime in India from the year 2014 to 2019, Maharashtra stood at top having reported maximum number of NDPS cases,followed by Punjab and Uttar Pradesh.[12]

If we consider the NCRB data regarding Court disposal of NDPS cases in India, near about 68572 cases were added in previous year pendency of 190920 cases so altogether 2,59,492 cases were sent for trial during 2019. Out of these 42142 cases were disposed of by courts whereas 217350 cases are still pending. It means that near about **83.8%** cases are still pending in the courts awaiting trial. As compared to other states the percentage rate of pendency of State of Maharashtra is **94%**.[13]The pendency rate of the year 2020 is **93.5%.**

All these figures drawn from NCRB records indicate that the problem of pendency of cases is very high in NDPS cases. Also the conviction rate which is seen to be high in NCRB and Court Records actually is high in cases of possession of drugs for consumption rather than of trafficking. It means that after 35 years of enactment of NDPS Act, there are still lacunas in implementation of NDPS Act due to which the actual culprits i.e. drug traffickers/drug peddlers are still out of reach of courts.

[10]Section 36 inserted by NDPS Act 2 of 1989

[11] https://www.casemine.com/judgement/in/581180912713e179479b2a1d

[12]https://indianexpress.com/article/india/ncrb-report-on-crime-in-india-with-38-5-crime-rate-punjab-tops-in-drugs-cases-6653750/

[13] https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%203.pdf

III. Aims and Objectives of study-

1. To study origin, history and development of implementation mechanism available in India for speedy disposal of NDPS cases.
2. To examine disposal rate and pendency in NDPS Special Courts in Nagpur and to find out causes behind delay in disposal of cases.
3. To analyse the nature of judgements passed and punishments imposed by Special Courts in NDPS cases under NDPS Act 1985.
4. To analyse effective implementation of legal provisions and the challenges faced by different stakeholders involved in investigation and trial of offences under NDPS Act.
5. To suggest reforms for effective implementation of NDPS Act 1985.

IV. Significance of the study-

The present study will be significant in assessing the working of Special Courts established under NDPS Act 1985 for speedy and effective disposal of cases. The actual data of pendency and disposal will be collected through this study will be useful to verify exact rate of disposal of the cases and conviction rate. Through careful analysis of each case researcher will find out the reasons behind huge pendency of cases and can suggest measures in implementation of different provisions of this Act. In addition to this proposed study will also try to throw light on role of other stakeholders such as investigating agencies, prosecutors etc. in implementation of this Act and does any lacunas are left behind by such agencies will affect in speedy and effective dispensation of justice by Special Courts.

Through literature review researcher found that the rate of conviction shown indisposal Records is above 80% in overall NDPS cases but in those total cases majority of the convictions arose incases of possession for use/consumption and not of drug trafficking. Therefore to find these gaps the proposed study will be conducted. The exact demarcation between conviction in cases of merely possession for use and cases of trafficking will help the policy makers to take effective steps in removing the discrepancies in legal framework.

The Department of Social Justice and Empowerment, Government Of India recently suggested that drug users should be seen as victims rather than convicts and therefore instead of awarding them punishment they should be sent to rehabilitation and de-addiction programmes.[14] The Government of India is yet in a process to verify need and necessity to

[14]https://economictimes.indiatimes.com/news/india/consensus-emerges-on-decriminalising-personal-drug-consumption/articleshow/87656928.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

decriminalise the provisions under NDPS Act in cases of mere possession for use/consumption. The present study is therefore very significant in finding out the exact number of persons who are involved in drug trafficking. Also through this study researcher will analyse the opinions of various agencies involved in the process of justice delivery towards proposed lenient approach in cases of possession of drugs for use/consumption.

Many studies which are conducted earlier on this topic had given recommendations for proper implementation of the Act but no one come up with the solutions by considering issues faced by these agencies in implementation of the Act and therefore present proposed study will be significant in reaching up to exact reasons behind ineffectiveness in implementation of the Act.

The research will thus very helpful in analysing issues and challenges faced by various stakeholders including judges, prosecutors and investigating agencies in implementation of various provisions of NDPS Act.

V. Area of Research-

Under Criminal Law and Criminal administration of justicethe proposed research work falls under. Criminal law is ever evolving field of research in which it is much needed to analyse working of enforcement agencies from time to time. The NDPS Act which is a Special Legislation enacted to deal with special offences and many stringent provisions included in it so evaluation of working of agencies involved will be of utmost importance and therefore this topic is chosen by researcher as subject matter of research from this research area.

VI. Review of Literature-

(Neha Singal, 2020) Author inthis report based on survey published by Vidhi Legal Policy analysed 839 case orders available from dataset of 10,669 cases from Magistrate Courts in Mumbai. The results shown that near about 97% cases reported were of possession or consumption of drugs. Almost every arrest they have made under this law in Mumbai has been for cannabis consumption, even though most of the drugs seized are not cannabis-based. As per the author, so as to boost their arrest rates in Mumbai, the police has chosen the easiest target: cannabis users, amongst the most marginalised sections of society: street and slum dwellers. These people are unlikely to have access to legal aid and are easy to scare and apprehend. The police arrested daily wage earners almostto secure a high conviction rate, those found consuming cannabis are picked up, often in the middle of the night, brought immediately before the magistrate, made to plead guilty, convicted and sentenced to minor imprisonment and fines on the same day. They are also usually young. And finally, to secure

a high case disposal rate, the judiciary also abdicated its role of watchdog, and allowed such guilty pleas.

(Ajit Avasthi, 2019)The present researcher in this work studied various conventions and legislations entered into at national and international level to combat with drug abuse. For the study author took references from two nationwide surveys conducted in 2004 and 2019 by the Ministry of Social Justice and Empowerment. As per the National mental health survey records, only 5% patients with drug disorder receive inpatient treatment and there is huge gap in treatment of drug use disorder thus author recommends for expansion of treatment and rehabilitation facilities for substance use disorders.

(Sunil Singh, 2018) In this work researcher did retrospective study of NDPS cases that were reported during January 2013-December 2017 at State Forensic Science Laboratory, Junga (Himachal Pradesh). The object of the study was to compile the available data in that locality with type of drug used. It was found in results that Charas and Heroin were the most common drugs of abuse in these four districts of Himachal Pradesh.

(Sharma, 2018)In her study researcher critically analysed the narcotic drugs and psychotropic substances Act 1985. As per the author special courts in India are overburdened and unnecessary harsh punishments were imposed under the Act. The restrictions imposed upon granting of bail resulting into denial of bail. The proper implementation of the Act is also not there and most importantly society is unaware about ill effects of drugs. Author thus recommends for speedy disposal of the cases at the hands of judiciary so that there will be fear in the mind of the people.

(Kannappan, 2018)This study focused upon critical review of changes made into the policies towards drug abuse by NDPS Amendment Act 2011. In views of author implementation of policies is the main concern now which needs to be considered for prevention of drug abuse.

(Shweta S, 2017)The researcher in present studycritically analysed the NDPS Act 1985 and different provisions under the Act. As per the author since its enactment many amendments took place in NDPS Act then also it contains many shortcomings needs to be eradicated. There is establishment of special courts prescribed under the Act but then also still number of cases awaiting trial. Also as unnecessarily harsh conditions were imposed for granting of bail, many accused under NDPS cases are lingering into jail as under trials. According to author, Corruption in system is one of the reasons for lesser rate of conviction. Author raised a question that many times NDPS Act does not distinctivelydifferentiates between a casual drug user, a hard addict, a pettypeddler and a seasoned drug trafficker which must be very important to be considered at the time of deciding punishments. Author further recommended

for improvising co-ordination among different states for investigation related matters and co-ordination between Government and rehabilitation centres can be a solution for reducing cases of drug abuse.

(Yadukul S., 2015) Author in this study critically analyzed the cases reported in Chamarajanagar district of Karnataka for a period of 5 years i.e. from 2010 till 2014. Being this district on southern border of Karnataka illegal cultivation and transportation is rampant and thus the cases were analyzed with this objective.

(Mohapatra, 2013)Here author critically reviewed the initiatives taken in India so as to control drug abuse. Author specifically criticized the provisions inserted by NDPS (Amendment) Act of 2011. As per the researcher, in past some years many efforts made towards formulation of policies and growth of infrastructure. What is remained is to see effectiveness and impact of those measures. The systematic research and evaluation is thus much needed in NDPS cases so as to make subsequent modifications in the policies in future.

(Chopra, 2012)This study is based upon reports of different National surveys conducted in India in last three decades. From analysis of the statistics author came to conclusion that the number is increasing of persons who are coming for treatment and thus in India a robust national Drug Abuse Monitoring System must be made to improve compliances.

(Sarda, 2011) In present study author analyzed role of Expert in various high court and Supreme Court decisions in NDPS cases. From the analysis of various Court decisions author came to conclusion that there are various defects and irregularities on the part of investigating agencies and FSL which rendered FSL reports inadmissible. Therefore author recommended that procedure should be prescribed for them so as to remove all these lacunas and also more FSLõs should be set up to carefully deal with NDPS cases.

VII. Hypothesis-

1. There is no any significant difference in speedy disposal of NDPS cases even after setting up of Special Courts for NDPS cases.
2. There is huge pendency of cases in NDPS Courts.
3. Judges are focussing upon conviction rather than using corrective measures like rehabilitation etc. in cases of consumption as well as trafficking.
4. Investigating agencies are not following the procedure strictly prescribed by the lawresulting into low conviction in drug trafficking cases.
5. The implementing agencies face many challenges in implementation of NDPS Act due to procedural lacunas in Act itself.

VIII. Research Methodology-

For present proposed research **mixed methodology** will be adopted as a research methodology to achieve desired outcomes. Mixed methodology is a type of research wherein **both doctrinal and non-doctrinal methods** are used by the researcher to conduct the study. Under doctrinal study, an analysis of judgements of NDPS Special Court will be done in which careful statistical analysis of secondary data i.e. judgements of Special NDPS Court will be carried on. Whereas an empirical analysis will be done on primary data collected from various stakeholders involved in implementation of NDPS Act.

i. Sampling technique-

The purposive sampling technique will be used to select sample of study. As per NCRB data published from the year 2014 to 2019, Maharashtra is at top position in reporting of NDPS cases. Therefore purposively researcher had chosen State of Maharashtra for selecting sample of the study. When preliminary study was done by researcher on NDPS cases in Maharashtra, it was found that NDPS cases are on rise specifically in four districts of Maharashtra i.e. Mumbai, Thane, Pune and Nagpur. Among these four districts, Nagpuris selected as a unit of study for collection of judgements as well as primary data of the study.

ii. Variables of the study-

1. Pendency of cases (dependent Variable)- Independent Variables
    a. Non filing of charge sheet within time.
    b. Time consumed in investigation
    c. Co-ordination among police and other agencies
    d. Number of cases and judges ratio
2. Conviction rate (dependent variable)- Independent Variables
    a. Hostile witness
    b. Not followed procedure while recording evidence by police or other agencies
    c. Benefit of doubt and burden of proof
    d. Non-availability of scientific evidence
3. Judicial Approach (dependent Variable)- Independent Variables

a. Procedural lacunas
b. Societal mindset
c. Legislative framework
d. Higher judicial decisions

4. Rehabilitation measures(dependent Variable)- Independent Variables
   a. Age of accused
   b. Type of offence
   c. Quantity of drug
   d. Habitual/first offender
5. Role of Stakeholders (dependent variable) - Independent Variables
   a. Non availability of Legal framework
   b. Lack of awareness
   c. Procedural lacunas/obstacles
   d. Lack of co-ordination among agencies

iii. Data collection and analysis-

Both primary and secondary data will be collected for the study.

Sources of Primary Data-

The data required for empirical analysis will be primary data and it will be collected primarily by using interview method. The various stakeholders involved in the process of implementation of NDPS Act will be interviewed and the said information will be analysed to find out challenges faced by them in speedy and effective implantation of the Act.

The qualitative data collected in the form of judgements will be carefully analysedmanually by going through each case and it will then be converted into quantitative data. The said converted quantitative data will be analysed using SPSS data analysis tool. The data will be finally tested by applying methods of testing of hypothesis. The findings will be recorded with the help of tables, charts, figures etc.

Sources of Secondary Data-

The main secondary sources for the proposed study will be the judgements the Special Court Nagpur. The Judgements of last 10 years i.e. from 2013 to 2023 will be collected from the official website of court http://ecourts.gov.in which will be statistically analysed to draw conclusions. Additionally Library resources, Statutes, books, Journals, research articles, Reports of different committees, Acts, landmark judgements and online resources etc. will be included as sources of secondary data for the study.

IX. Limitations of study-

The present study will be confined to the cases decided by the Special NDPS Courts in City and district of Nagpur State of Maharashtra. The present research will be restricted to the cases available online on Website of e- Court. And as on the said website data from 2011 till date is available, the cases decided by all these courts within the time span of 10 years i.e. from 2013 to 2023 will be analysed.

The study will also be focussing upon collection of primary data with the help of interview method of data collection. Here the stakeholders will be chosen from amongst the agencies that are directly involved in investigation, trial, and post conviction servicesprovided or dealing with under the NDPS Act 1985.

X. Chapterisation-

1. Introduction
2. International Legal Frameworkon drug trafficking
3. National Legal Framework on drug trafficking in India
4. Analysis of judgements of Special NDPS Court, Nagpur
5. Challenges faced by various stakeholders in implementation of NDPS Act 1985- An Empirical Analysis
6. Result and Discussion
7. Suggestions and Conclusion

Research Scholar **Research Supervisor**

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